

ORDINANCE NO. 243

AN ORDINANCE OF THE CITY OF MALIBU AMENDING THE STORM WATER AND URBAN RUNOFF POLLUTION CONTROL ORDINANCE TO PROVIDE STORM WATER POLLUTION CONTROL FOR PLANNING AND CONSTRUCTION OF NEW DEVELOPMENT AND REDEVELOPMENT PROJECTS AND AMENDING AND SUPPLEMENTING THE MALIBU MUNICIPAL CODE

The City Council of the City of Malibu does hereby ordain as follows:

Section 1. Section 13.04.020(C) of Chapter 13.04 of the Malibu Municipal Code is hereby amended to read:

“C. The City of Malibu is a co-permittee under the “Waste Discharge Requirements for Municipal Storm Water and Urban Runoff Discharges Within the County of Los Angeles, and the Incorporated Cities Therein, Except the City of Long Beach” (Order No. 01-182), NPDES Permit No. CAS00401, dated December 13, 2001, issued by the California Regional Water Quality Control Board — Los Angeles Region, which also serves as a NPDES permit under the Federal Clean Water Act and as a co-permittee, the city is required to implement procedures with respect to the entry of non-storm water discharges into the municipal storm water system.”

Section 2. Subsections 13.04.020(D), 13.04.020(E), and 13.04.020(F) of Chapter 13.04 of the Malibu Municipal Code are hereby repealed. Subsections 13.04.020(G) and 13.04.020(H) are hereby renumbered as subsections 13.04.020(D) and 13.04.020(E), respectively.

Section 3. 13.04.030(C) of Chapter 13.04 of the Malibu Municipal Code is amended to read as follows:

“C. This chapter is also intended to provide the city with the legal authority necessary to control discharges to and from those portions of the municipal storm water system over which it has jurisdiction as required by the municipal NPDES permit and to hold dischargers to the municipal storm water system accountable for their contributions of pollutants and flows.”

Section 4. Section 13.04.040 of Chapter 13.04 of the Malibu Municipal Code is hereby amended to add the following definitions in appropriate alphabetical sequence:

“Construction” means constructing, clearing, grading, or excavation that results in soil disturbance. Construction includes structure teardown. It does not include routine maintenance to maintain original line and grade, hydraulic capacity, or original purpose of facility; emergency construction activities required to immediately protect public health and safety; interior remodeling with no outside exposure of construction material or construction waste to storm water; mechanical permit work; or sign permit work.

“Control” means to minimize, reduce, eliminate, or prohibit by technological, legal, contractual or other means, the discharge of pollutants from an activity or activities.

“Development” means any construction, rehabilitation, redevelopment or reconstruction of any public or private residential project (whether single-family, multi-unit or planned unit development); industrial, commercial, retail and other non-residential projects, including public agency projects; or mass grading for future construction. It does not include routine maintenance to maintain original line and grade, hydraulic capacity, or original purpose of facility, nor does it include emergency construction activities required to immediately protect public health and safety.

“Directly Adjacent” means situated within 200 feet of the contiguous zone required for the continued maintenance, function, and structural stability of the environmentally sensitive area.

“Director” means the Director of Public Works of the City or the Director’s designee.

“Discharge” means when used without qualification the “discharge of a pollutant.”

“Discharging Directly” means outflow from a drainage conveyance system that is composed entirely or predominantly of flows from the subject property, development, subdivision, or industrial facility, and not commingled with the flows from adjacent lands.

“Discharge of a Pollutant” means: any addition of any “pollutant” or combination of pollutants to “waters of the United States” from any “point source” or, any addition of any pollutant or combination of pollutants to the waters of the “contiguous zone” or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation. The term discharge includes additions of pollutants into waters of the United States from: surface runoff which is collected or channeled by man; discharges through pipes, sewers, or other conveyances owned by a State, municipality, or other person which do not lead to a treatment works; and discharges through pipes, sewers, or other conveyances, leading into privately owned treatment works.

“Disturbed Area” means an area that is altered as a result of clearing, grading, and/or excavation.

“Environmentally Sensitive Area” (“ESA”) means an area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which would be easily disturbed or degraded by human activities and developments (California Public Resources Code § 30107.5). Areas subject to storm water mitigation requirements are areas designated as Significant Ecological Areas by the County of Los Angeles (Los Angeles County Significant Areas Study, Los Angeles County Department of Regional Planning (1976) and amendments); an area designated as a Significant Natural Area by the California Department of Fish and Game’s Significant Natural Areas Program, provided that area has been field verified by the Department of Fish and Game; an area listed in the Basin Plan as supporting the Rare, Threatened, or Endangered Species (RARE) beneficial use; and an area

identified by the City as environmentally sensitive.

“Inspection” means entry and the conduct of an on-site review of a facility and its operations, at reasonable times, to determine compliance with specific municipal or other legal requirements. The steps involved in performing an inspection, include, but are not limited to:

1. Pre-inspection documentation research;
2. Request for entry;
3. Interview of facility personnel;
4. Facility walk-through.
5. Visual observation of the condition of facility premises;
6. Examination and copying of records as required;
7. Sample collection (if necessary or required);
8. Exit conference (to discuss preliminary evaluation); and,
9. Report preparation, and if appropriate, recommendations for coming into compliance.

“Maximum Extent Practicable (MEP)” means the standard for implementation of storm water management programs to reduce pollutants in storm water, including management practices, control techniques and system, design and engineering methods, and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants. See also State Board Order WQ 2000-11 at page 20.

“Planning Priority Projects” mean those projects that are required to incorporate appropriate storm water mitigation measures into the design plan for their respective project, including:

1. Ten (10) or more unit homes (includes single family homes, multifamily homes, condominiums, and apartments);
2. A One Hundred-Thousand (100,000) or more square feet of impervious surface area industrial/commercial development;
3. Automotive service facilities (SIC 5013, 5014, 5541, 7532-7534, and 7536-7539);
4. Retail gasoline outlets;
5. Restaurants (SIC 5812);

6. Parking lots Five Thousand (5,000) square feet or more of surface area or with 25 or more parking spaces;

7. Redevelopment projects in subject categories that meet Redevelopment thresholds;

8. Projects located in or directly adjacent to or discharging directly to an ESA, which meet the thresholds described herein; and

9. Those projects that require the implementation of a site-specific plan to mitigate post-development storm water for new development not requiring a SUSMP but which may potentially have adverse impacts on post-development storm water quality, and where the following project characteristics exist:

- (a) Vehicle or equipment fueling areas;
- (b) Vehicle or equipment maintenance areas, including washing and repair;
- (c) Commercial or industrial waste handling or storage;
- (d) Outdoor handling or storage of hazardous materials;
- (e) Outdoor manufacturing areas;
- (f) Outdoor food handling or processing;
- (g) Outdoor animal care, confinement, or slaughter; or
- (h) Outdoor horticulture activities.”

“Project” means all development, redevelopment, and land disturbing activities.

“Runoff” means any runoff including storm water and dry weather flows from a drainage area that reaches a receiving water body or subsurface. During dry weather it is typically comprised of base flow either contaminated with pollutants or uncontaminated, and nuisance flows.

“Significant Redevelopment” means land-disturbing activity that results in the creation or addition or replacement of 5,000 square feet or more of impervious surface area on an already developed site.”

“Site” means the land or water area where any “facility or activity” is physically located or conducted, including adjacent land used in connection with the facility or activity.

“Storm event” means a rainfall event that produces more than 0.1 inch of precipitation in 24 hours unless specifically stated otherwise.

Section 5. Section 13.04.040 of Chapter 13.04 of the Malibu Municipal Code is hereby amended to substitute the following definitions for and in place of the existing definitions

as follows:

“Hillside” means property located in an area with known erosive soil conditions, where the development contemplates grading on any natural slope that is twenty-five percent or greater and where grading contemplates cut or fill slopes.

“Illicit discharge” means any discharge to the storm drain system that is prohibited under local, state or federal statutes, ordinances, codes or regulations. The term illicit discharge includes all non-storm water discharges except discharges pursuant to a separate NPDES permit, discharges that are identified in Part 1, “Discharge Prohibitions” of Order 01-182, and discharges authorized by the Regional Board Executive Officer.

“Municipal NPDES permit” means the “Waste Discharge Requirements for Municipal Storm Water and Urban Runoff Discharges Within the County of Los Angeles, and the Incorporated Cities Therein, Except the City of Long Beach” (Order No. 01-182), NPDES Permit No. CAS00401, dated December 13, 2001, issued by the California Regional Water Quality Control Board — Los Angeles Region, and any successor permit to that permit.

"Redevelopment" means, on an already developed site, the creation or addition of at least five thousand (5,000) square feet of impervious surfaces, as such term is defined in the current version of the SUSMP approved by the Regional Board. Redevelopment includes, but is not limited to the following activities that meet the minimum standards set forth in this definition: (1) the expansion of a building footprint or addition or replacement of a structure; (2) structural development, including an increase in gross floor area and/or exterior construction or remodeling; (3) replacement of impervious surface that is not part of a routine maintenance activity and (4) land disturbing activities related to structural or impervious surfaces. Redevelopment does not include routine maintenance activities that are conducted to maintain original line and grade, hydraulic capacity, original purpose of facility or emergency redevelopment activity required to protect public health safety.

“Restaurant” means a facility that sells prepared foods and drinks for consumption, including stationary lunch counters and refreshment stands selling prepared foods and drinks for immediate consumption. (SIC code 5812).

Section 6. The definition of the term “Automotive Repair Shop” set forth in Section 13.04.040 of Chapter 13.04 of the Malibu Municipal Code is hereby repealed and the following new definition is hereby added in its place as follows:

“Automotive Service Facilities” means a facility that is categorized in any one of the following Standard Industrial Classification (SIC) codes: 5013, 5014, 5541, 7532-7534, or 7536-7539 (as amended).

Section 7. Section 13.04.060(A) of Chapter 13 of the Malibu Municipal Code is amended to read as follows:

“A. Illicit Discharges and Connections. It is prohibited to establish, use, maintain, or continue illicit connections to the municipal storm water system, or to commence or continue any illicit discharges to the municipal storm water system. This prohibition against illicit connections is expressly retroactive and applies to connections made in the past but excludes improvements to real property permitted over which uncontaminated storm water runoff flows.”

Section 8. Section 13.04.060(D)(4) of Chapter 13.04 of the Malibu Municipal Code is hereby amended to read as follows:

“4. Discharges of untreated runoff to the MS4 from storage areas of materials containing grease, oil, or other hazardous substances (e.g. motor vehicle parts), and uncovered receptacles containing hazardous materials;”

Section 9. Section 13.04.060(D)(5) of Chapter 13.04 of the Malibu Municipal Code is hereby amended to read as follows:

“5. The discharge of chlorinated/brominated swimming pool water and filter backwash;”

Section 10. Sections 13.04.060(D)(11) and 13.04.060(D)(12) are hereby added to Chapter 13.04 of the Malibu Municipal Code to read as follows:

“11. Discharge of any food or food processing wastes; and

12. Discharge of any fuel and chemical wastes, animal wastes, garbage, batteries, and other materials that have potential adverse impacts on water quality.”

Section 11. Section 13.04.060(F) is hereby added to Chapter 13.04 of the Malibu Municipal Code to read as follows:

“F. Industrial Activities. No person shall conduct any industrial activity in the city without obtaining all permits required by state or federal law, including a NPDES general industrial activity storm water permit when required. Persons conducting industrial activities within the city shall refer to the most recent edition of the Industrial/Commercial Best Management Practices Handbook, produced and published by the Storm Water Quality Task Force, for specific guidance on selecting best management practices for reducing pollutants in storm water discharges from industrial activities.”

Section 12. The preamble of Section 13.04.080 of Chapter 13.04 of the Malibu Municipal Code is hereby amended to read as follows:

“Owners and occupants of property within the city shall implement Best Management Practices to prevent or reduce the discharge of pollutants to the municipal storm water system to the maximum extent practicable. Treatment and structural Best Management Practices shall be properly operated and maintained to prevent the breeding of vectors. Implementation includes, but is not limited to:”

Section 13. Existing Section 13.04.080(B) of Chapter 13.04 of the Malibu Municipal Code is hereby amended by adding the following sentence to the end of the subparagraph:

“Sweeping and collection of debris is encouraged for trash disposal.”

Section 14. Existing Section 13.04.090 of Chapter 13.04 of the Malibu Municipal Code is hereby amended to designate the existing provision as subparagraph “A” and to add subparagraphs B, C and D as follows:

“A. Each industrial discharger, discharger associated with construction activity, or other discharger described in any general storm water permit addressing such discharges, as may be issued by the U.S. Environmental Protection Agency, the State Water Resources Control Board, or the Regional Board, shall comply with all requirements of such permit. Each discharger identified in an individual NPDES permit shall comply with and undertake all activities required by such permit. Proof of compliance with any such permit may be required in a form acceptable to the Authorized Enforcement Officer prior to the issuance of any grading, building or occupancy permits, or any other type of permit or license issued by the city.

B. Storm water runoff containing sediment, construction materials or other pollutants from the construction site and any adjacent staging, storage or parking areas shall be reduced to the maximum extent practicable. The following shall apply to all construction projects within the city and shall be required from the time of land clearing, demolition or commencement of construction until receipt of a certificate of occupancy:

1. Sediment, construction wastes, trash and other pollutants from construction activities shall be reduced to the maximum extent practicable.

2. Structural controls such as sediment barriers, plastic sheeting, detention ponds, filters, berms, and similar controls shall be utilized to the maximum extent practicable in order to minimize the escape of sediment and other pollutants from the site.

3. Between October 1 and April 15, all excavated soil shall be located on the site in a manner that minimizes the amount of sediment running onto the street, drainage facilities or adjacent properties. Soil piles shall be bermed or covered with plastic or similar materials until the soil is either used or removed from the site.

4. No washing of construction or other vehicles is permitted adjacent to a construction site. No water from the washing of construction vehicle or equipment on the construction site is permitted to run off the construction site and enter the municipal storm water system.

5. Trash receptacles must be situated at convenient locations on construction sites and must be maintained in such a manner that trash and litter does not accumulate on the site nor migrate off site.

6. Erosion from slopes and channels must be controlled through the effective combination of Best Management Practices.

C. The owner or authorized representative of the owner must certify in a form acceptable to the Director or duly authorized representative that Best Management Practices to control runoff from construction activity at all construction sites will be implemented prior to the issuance of any Building or Grading permit,

D. A Local Storm Water Pollution Prevention Plan and Wet Weather Erosion Control Plan for construction activities shall be required by The Director or duly authorized representative thereof consistent with the municipal NPDES permit. Such plans must be submitted to the city for review and approval prior to the issuance of building or grading permits.”

Section 15. Existing Section 13.04.110 of Chapter 13.04 of the Malibu Municipal Code is hereby amended to read as follows:

“A. Projects Requiring a SUSMP. The following projects for New Development and Redevelopment, if subject to Discretionary Project approval in the Zoning Ordinance of the City, shall require a Storm Water Mitigation Plan that complies with the most recent SUSMP and the current Municipal NPDES Permit:

1. Ten or more unit homes (includes developments of single family homes, condominiums and apartments);
2. A One Hundred Thousand (100,00) or more square feet of impervious surface area industrial/commercial development;
3. Automotive Service facilities (SIC 5013, 5014, 5542, 7532-7534 and 7536-7539);
4. Retail gasoline outlets;
5. Restaurants (SIC 5812);
6. Parking lots Five Thousand (5,000) square feet or more of surface area or with twenty-five (25) or more parking spaces;
7. Redevelopment projects in subject categories that meet Redevelopment thresholds;
8. Any New Development or Redevelopment project located in or directly adjacent to or discharging directly into an Environmentally Sensitive Area (as defined herein), where the development will:
 - i. Discharge storm water and urban runoff that is likely to impact a sensitive biological species or habitat; and
 - ii. Create 2,500 square feet or more of impervious surface area.”

Section 16. Existing Section 13.04.110(B) of Chapter 13.04 of the Malibu Municipal Code is hereby amended to read as follows:

“B. Incorporation of SUSMP into Project Plans.

1. An applicant for a New Development or a Redevelopment Project identified in paragraph a of this Section shall incorporate into the applicant's project plans a Storm Water Mitigation Plan (“SWMP”), which includes those Best Management Practices necessary to control storm water pollution from construction activities and facility operations, as set forth in the SUSMP applicable to the applicant's project. Structural or Treatment Control BMP's (including, as applicable, post-construction Treatment Control BMP's) set forth in project plans shall meet the design standards set forth in the SUSMP and the current Municipal NPDES Permit.

2. If a Project applicant has included or is required to include Structural or Treatment Control BMP's in project plans, the applicant shall provide verification of maintenance provisions. The verification shall include the applicant's signed statement, as part of its project application, accepting responsibility for all structural and treatment control BMP maintenance until such time, if any, the property is transferred.

3. A new single-family hillside home development or Redevelopment shall include mitigation measures to:

- (a) Conserve natural areas;
- (b) Protect slopes and channels;
- (c) Provide storm drain system stenciling and signage;
- (d) Divert roof runoff to vegetated areas before discharge unless the diversion would result in slope instability; and
- (e) Direct surface flow to vegetated areas before discharge unless the diversion would result in slope instability.

4. Numerical Design Criteria: Post-construction Treatment Control BMPs for all projects must incorporate, at a minimum, either a volumetric or flow based treatment control design standard, or both, as identified below to mitigate (infiltrate, filter or treat) storm water runoff:

- (a) Volumetric Treatment Control BMP
 - (1) The 85th percentile 24-hour runoff event determined as the maximized capture storm water volume for the area, from the formula recommended in Urban Runoff Quality Management, WEF Manual of Practice No. 23/ ASCE Manual of Practice No. 87, (1998); or
 - (2) The volume of annual runoff based on unit basin storage water

quality volume, to achieve 80 percent or more volume treatment by the method recommended in California Stormwater Best Management Practices Handbook – Industrial/ Commercial, (1993); or

- (3) The volume of runoff produced from a 0.75 inch storm event, prior to its discharge to a storm water conveyance system; or
- (4) The volume of runoff produced from a historical-record based reference 24-hour rainfall criterion for “treatment” (0.75-inch average for the Los Angeles County area) that achieves approximately the same reduction in pollutant loads achieved by the 85th percentile 24-hour runoff event.

(b) Flow Based Treatment Control BMP

- (1) The flow of runoff produced from a rain event equal to at least 0.2 inches per hour intensity; or
- (2) The flow of runoff produced from a rain event equal to at least two times the 85th percentile hourly rainfall intensity for Los Angeles County; or
- (3) The flow of runoff produced from a rain event that will result in treatment of the same portion of runoff as treated using volumetric standards above.

5. Applicability of Numerical Design Criteria: The numerical design criteria listed above shall apply to the following categories of projects required to design and implement post-construction treatment controls to mitigate storm water pollution:

- (a) Single-family hillside residential developments of one (1) acre or more of surface area;
- (b) Housing developments (including single family homes, multifamily homes, condominiums, and apartments) of ten (10) units or more;
- (c) A 100,000 square feet or more impervious surface area industrial/commercial development;
- (d) Automotive service facilities (SIC 5013, 5014, 5541, 7532-7534 and 7536-7539) [5,000 square feet or more of surface area];
- (e) Retail gasoline outlets (5,000 square feet or more of impervious surface area and with projected Average Daily Traffic (ADT) of 100 or more vehicles). [Subsurface Treatment Control BMP’s which may endanger

public safety (i.e., create an explosive environment) are considered not appropriate];

- (f) Restaurants (SIC 5812) [5,000 square feet or more of surface area];
- (g) Parking lots 5,000 square feet or more of surface area or with 25 or more parking spaces;
- (h) Projects located in, adjacent to or discharging directly to an Environmentally Sensitive Area that meet threshold conditions identified above in Section 8(a); and
- (i) Redevelopment projects in subject categories that meet Redevelopment thresholds.

6. The following categories of Projects which otherwise do not require a SUSMP, but which may potentially have adverse impacts on post-development storm water quality, shall be designed to include post-construction Treatment Controls to mitigate storm water pollution and the implementation of a site-specific plan to mitigate post-development storm water for New Development and Redevelopment where one or more of the following Project characteristics exist:

- (a) Vehicle or equipment fueling areas;
- (b) Vehicle or equipment maintenance areas, including washing and repair;
- (c) Commercial or industrial waste handling or storage;
- (d) Outdoor handling or storage of hazardous materials;
- (e) Outdoor manufacturing areas;
- (f) Outdoor food handling or processing;
- (g) Outdoor animal care, confinement, or slaughter; or
- (h) Outdoor horticulture activities.

7. A SUSMP, or site-specific requirements, including post-construction storm water mitigation, shall be required for all Planning Priority Projects (as defined herein) that undergo Significant Redevelopment (as defined herein) in their respective categories.

8. Existing single family structures are exempt from the Redevelopment requirements set forth in this Chapter.”

Section 17. Existing Section 13.04.110(C) of Chapter 13.04 of the Malibu Municipal Code is hereby amended to read as follows:

“C. Issuance of Discretionary Permits. No discretionary permit may be issued for any New Development or Redevelopment Project identified in paragraph A of this Section until the Authorized Enforcement Officer confirms that the project plans comply with the applicable stormwater mitigation plans and enumerated design criteria requirements. Where Redevelopment results in an alteration to more than fifty percent (50%) of impervious surfaces of a previously existing development, and the existing development was not subject to post-development storm water quality control requirements, the entire Project must be mitigated. Where Redevelopment results in an alteration to less than fifty percent (50%) of impervious surfaces of a previously existing development, and the existing development was not subject to post-development storm water quality control requirements, only the alteration must be mitigated, and not the entire development. Existing single family structures are exempt from the redevelopment requirements.”

Section 18. Section 13.04.120(H) is hereby added to Chapter 13.04 of the Malibu Municipal Code to read as follows:

“H. *Authority to Conduct Samplings and Establishing Sampling Devices.* With the consent of the owner or occupant or pursuant to an inspection warrant, any authorized enforcement officer may establish on any property such devices as necessary to conduct sampling and monitoring activities necessary to determining the concentrations of pollutants in stormwater and/or non-stormwater runoff. The inspections provided for herein may include but are not limited to:

1. Inspecting efficiency or adequacy of construction or post construction BMPs;
2. Inspection, sampling and testing any area runoff, soils in areas subject to runoff, and or treatment system discharges;
3. Inspection of the integrity of all storm drain and sanitary sewer systems, including the use of smoke and dye tests and video survey of such pipes and conveyance systems;
4. Inspection of all records of the owner, contractor, developer or occupant of public or private property relating to BMP inspections conducted by the owner, contractor, developer or occupant and obtaining copies of such records as necessary;
5. Identifying points of stormwater discharge from the premises whether surface or subsurface and locating any illicit connection or discharge.”

Section 19. If any section, subsection, sentence, clause, portion, or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of any competent jurisdiction, such decision shall not affect the validity of the remaining sections, subsections, sentences, clauses, portions, or phrases of this Ordinance. The City Council hereby declares that it would have passed this Ordinance and each and every section, subsection, sentence, clause, portion, or phrase without regard to whether any other section, subsection,

sentence, clause, portion, or phrase of the Ordinance would be subsequently declared invalid or unconstitutional.

Section 20. **Certification.** The City Clerk shall certify the adoption of this ordinance.

PASSED, APPROVED AND ADOPTED this ____ day of _____, 2002

Jeff Jennings, MAYOR

ATTEST:

Lisa Pope, City Clerk

APPROVED AS TO FORM:

Christi Hogin, City Attorney